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IN THE

Supreme Court of the United States

October Term, 1963

No. 513

RAYMOND D. BROWN,

Petitioner,

against

DREW CHEMICAL CORPORATION
(formerly E. F. Drew & Co., Inc.),

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Raymond D. Brown,
Petitioner, Pro Se,
P. O. Box 236,
Boonton, New Jersey.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner, Raymond D. Brown, appearing *pro se*, is an unemployed laborer, and a citizen of the United States who respectfully prays that a Writ of Certiorari be issued from and under the seal of this Court, to review the decree of the Supreme Court of New Jersey, rendered on July 1, 1963 denying Certification to the Appellate Division of the Superior Court, and thus affirming the Opinions of that Court and the Law Division of the Superior Court, denying the Petitioner's Counter-Motions.

As a measure of economy, the Record on Appeal submitted to this Court consists of the Petition for Certification and Appendix, Brief in Opposition, and Reply Brief used by the parties in the Supreme Court of New Jersey. Appended hereto is all matter which is not included in said Records.

Opinions Below

The judgment of the Law Division of the Superior Court, rendered on November 9, 1962 is on page 21a of the Appendix to the Petition used below, and its supporting Order is on page 2a of the Brief in Opposition.

While the case was pending in the Appellate Division of the Superior Court, the Petitioner attempted to effect a transfer of action to speed its progress. This Petition is reproduced on page 1a and the Order of Denial is on page 3a. Therefore, the Appeal remained in the Appellate Court.

The affirming Opinion of the Appellate Division of the Superior Court, rendered on May 13, 1963, is on page 45a of the same Appendix; with its supporting Mandate on page 4a of the Appendix herein.

The Order of the Supreme Court of New Jersey, entered on July 1, 1963 denying Certification, is appended hereto on page 6a. It is from this Order that this Petition has been brought before this Court.

Jurisdiction

The Supreme Court of New Jersey is the highest tribunal of that State in which a decision for the matter involved herein could be had. Thus, 28 U. S. C. A. Sec. 2101 (c) has been complied with.

Jurisdiction to review this case upon Writ of Certiorari is conferred upon this Court by 28 U. S. C. A. Sec. 1257(3). Also, an authority has provided that where a right is claimed in a state court arising under a statute of the United States, a question is presented reviewable by the Supreme Court of the United States. *Supreme Lodge, etc. v. Knight of Pythias of North America, etc.*, 1912, 59 So. 88, 102 Miss. 280.

This application presents the federal question whether or not the State of New Jersey, upon enacting the Law Against Discrimination, i.e. N. J. S. A. 18:25-1 (" " " in Employment, N. J. S. A. 18:25-12, *et seq.*), can constitutionally deny the guarantee of due process of law to those complainants seeking redress of grievances pursuant to that statute.

Questions Presented for Review

(1) Although the Complaint (R. App. to Pet. p. 1a) is somewhat weak on proper legal terminology, does this Court find that it contains no allegation nor reasonable inference that the Respondent (Defendant) had breached an agreement with the Petitioner (Plaintiff)?

(2) Does the State of New Jersey have a Federal right to deny any citizen the right to bring Civil Action in a court of law or equity as a breach of its prescribed remedy?

(3) Does the State of New Jersey have a Federal right to authorize an administrative agency to function as a Trial Court, when that agency by State law, is "" " " not bound by the strict rules of evidence prevailing in courts of law or equity"?

(4) In this proceeding as in those below, the Petitioner has been unable to prove that the Respondent's discriminatory policy could be attributed to any of those reasons specifically forbidden by the statute N. J. S. A. 18:25-12(a) i.e., "" " " race, creed, color, national origin, ancestry, or age " " "".

Therefore, does this Court find that in all such cases the Law Against Discrimination, N. J. S. A. 18:25-1, *et seq.* shall be deemed null and void?

(5) The theory behind the following question presents a *new argument* which is mainly intended to apply in the event that this Court takes an affirmative stand to the 4th question. However, it may be taken to co-exist with the

original argument. Since for economic reasons it was mandatory that the Petitioner be gainfully employed, in the absence of the applicability of N. J. S. A. 18:25-1, in an employment case such as here, where the employee was forced to labor against his will by the threat of dismissal, would not his action be supported by U. S. C. A. Amend. XIII Sec. I, which abolished involuntary servitude?

Statement of the Case

On September 4, 1962 the Petitioner filed a Civil Action Complaint (R. App. to Pet., p. 1a) against the Respondent in the Law Division of the Superior Court. It pled that on April 13, 1955 he had been hired as a "Sample Filler" at an hourly wage of $1.50. And that even after 3 merit raises of 5¢ each, he was being discriminated against by being required, under the threat of dismissal, to work contrary to the title under which the position had been accepted—without further wage increments.

Subsequent pleas established the fact that after several futile attempts with the Personnel Department to have his pay adjusted, that the Petitioner threatened civil action in a letter to the company, who replied that it was their desire to be fair with all employees, and informed him that the Personnel Manager would review the Petitioner's employment status. Whereupon, said person discharged the Petitioner for having threatened to file the Complaint.

To the foregoing, the Petitioner stated that the Respondent's actions were in violation of the Law Against Discrimination in Employment, N. J. S. A. 18:25-12 Sec. (a) and (d), which provide:

> "It shall be an unlawful employment practice, or as the case may be, an unlawful discrimination:
>
> (a) For an employer, because of the race, creed, color, national origin, ancestry, or age of any individual, or because of the liability for

service in the Armed Forces of the United States, of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual *in compensation or in terms,** conditions or privileges of employment, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces.

. . . . . .

(d) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this act[1] or because he has *filed a complaint,** testified or assisted in any proceeding under this act."

---

* (emphasis added)

[1] Sections 18:25-1 to 18:25-28.

Finally the Petitioner claimed arrearages in the amount of $3,870.13 due from April 13, 1956 to May 8, 1962. And further claimed a loss of $18.48 per working day (5 per week), until termination of suit. This claim was later amended pursuant to a Union agreement (R. App. to Pet., p. 44a) to recover a loss of $18.88 per working day from December 18, 1962, until termination of suit.

On November 9, 1962 the Respondent moved *without answering*, that the Complaint had failed to state a cause of action upon which relief could be granted (R. App. to Pet., p. 8a). This argument was brought on a 3-point basis, which was maintained throughout the Courts below and is as follows:

"(1) The Complaint fails to allege a breach of contract or breach of agreement by the Defendant.

(2) The Complaint fails to allege any violation of the Law Against Discrimination, N. J. S. A. 18:25-1 et seq.

(3) The Plaintiff has failed to exhaust his administrative remedies and therefore has no standing before the Courts." (R. App. to Pet., pp. 8a-11a; pp. 46a-13; pp. 28a-11; pp. 29a-20; pp. 33a-1; R. Brief in Opp., pp. 3-19.)

Rule 23(f) of this Court provides that reference be made to the stage in the proceedings in the court of first instance and the appellate court at which the federal question was raised. However, because of the Petitioner's layman status, probably the best reference to compliance with this rule in the Trial Court, can be found where he has indicated that he was aware that an administrative hearing would jeopardize the strength of his argument (R. App. to Pet., pp. 15a-15-22; pp. 20a-28-37). These allegations easily infer the federal argument that the administrative procedure lacks the guarantee of due process of law. But in the appellate courts the federal question was raised in a more direct manner. See R. App. to Pet., pp. 24a-26a-10-22.

Argument and Authorities

As an initial defense, the Petitioner urges that his lack of experience with proper legal terminology somewhat necessitates reliance upon the well-established doctrine of liberality of pleading, and the requirement that all reasonable inferences be considered most favorable to the pleader, *Jer. in City* v. *Hague*, 18 N.J. 584 (1955). Thus, by an examination of the Complaint, the Court will find it a simple matter to determine that since the Petitioner had been hired to work as a "Sample Filler" but forced, under the threat of dismissal, to labor contrary to that arrangement without equal compensation, that the Respondent was guilty of a *swindle by breach of agreement*, regardless of whether any prior agreement existed to pay the Petitioner more than he was in fact paid. Here, it is essential for the Court to note that the title given to the

position and the actual working conditions encountered are two entirely different matters. Also, in rebuttal of the Respondent's contention that the Petitioner's action failed to allege a breach of contract, in this case as in the majority of employment relationships involving the proletariat, the employee was merely given the position, and no contract existed.

Therefore, it is obvious that the Respondent's actions were contrary to N. J. S. A. 18:25-12(a), which forbids discrimination against individuals "* * * in compensation or in terms * * *."

The Respondent's denial of any infringement upon the Petitioner's rights also included the contention that the mere *threat* to file a Complaint did not constitute an offense under N. J. S. A. 18:25-12 (d) which forbids that an employer "* * * discharge * * * any person * * * because he has filed a Complaint * * *." In brief terms, the Petitioner has previously argued that since the Respondent was given formal notice of the impending civil action, that the provision in the statute, *supra*, should apply regardless of whether the Complaint had actually been filed. But privately he (Petitioner) agreed that dismissal is proper when *court action* is brought. See R Pet. Point Three, pp. 5, 6.

To the sufficiency of the Respondent's allegation that the Petitioner must exhaust his administrative remedies, since the Commissioner of the State Board of Education had been given jurisdiction in matters involving discrimination, it is hereby acknowledged that due process of law may be afforded administratively as well as judicially, since lawful administrative process is due process equally as much as lawful judicial process; *Nulter* v. *State Road Commission of West Virginia*, 1937, 193 S. E. 549, 119 W. Va. 312.

However, the doctrine of exhaustion of administrative remedies admits exception in application when matters

involving public interest necessitating prompt resolution are involved, *Durgin* v. *Brown* 37 N. J. 189 (1962), or where the question involved is solely an issue of law or statutory construction, as in *Deaney* v. *Linen Thread Co.*, 19 N. J. 578 (1955). Therefore, with respect to *Nulter* v. *State Road Commission*, *supra*, its theory is applicable only where it does not infringe upon the Petitioner's federally created rights which guarantee due process of law.

At this point it is necessary for the Court to give consideration to N. J. S. A. 18:25-16 which provides *inter alia:*

> "* * * the Commissioner shall not be bound by the strict rules of evidence prevailing in courts of law or equity."

Even to the Petitioner's layman status, this clause in the remedial provisions reveals that while creating the Law Against Discrimination the State provided a means to suppress the evidence of any complaint by restricting his action to arbitrary or quasi-judicial review, wherein he lacks the guarantee of due process of law. U. S. C. A. Amend. XIV Sec. 1, page 383 provides *inter alia:*

> "* * * nor shall any State deprive any person of life, liberty, or property without due process of law."

It has been stated that where the purpose of the statute is a legitimate function of government, *and the measures invoked are wholly reasonable and appropriate to such purpose, there is no invasion of the constitutional guarantee of due process of law* *. *Singer Sewing Mach. Co.* v. *New Jersey Unemployment Compensation Commission*, 1942, 27 A. 2d 889, 128 N. J. L. 611, affirmed 31 A. 2d 818, 130 N. J. L. 173. Therefore, it is clearly evident that in order for every citizen to be afforded the *guarantee* of due process of law, that his *initial* hearing must be held before a body where the strict rules of evidence apply as they do in a trial court—even though that body has only administrative powers.

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* Emphasis added.

Indeed, the State itself dutifully sensed the need to permit complaints to bring independent action when, in N. J. S. A. 18:25-27 it declared:

> "The provisions of this act shall be construed fairly and justly with due regard to the interests of all parties. Nothing contained in this act shall be deemed to repeal any of the provisions of the Civil Rights Law or any other law of this state relating to discrimination because of race, creed, color, national origin or ancestry or liability for service in the Armed forces of the United States; except that, as to practices and acts declared unlawful by section eleven of this Act*, the procedure herein provided shall, while pending, be exclusive; and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the individual concerned. *Nothing herein contained shall bar, exclude, or otherwise affect any right or action, civil or criminal, which may exist independently of any right to redress against or specific relief from an unlawful employment practice or unlawful discrimination.*" **

* N. J. S. A. 18:25-12.

** Emphasis added.

From the emphasized portion of the provision *supra*, this Court should readily be able to grasp that although the State prescribed the administrative remedy, it did not transgress upon the Petitioner's independent right to seek redress before the Trial Courts, and that the Respondent's argument in rebuttal of this (R. App. to Pet., pp. 17a-18a, 25-10) is merely superficial for the purpose of providing a contest.

Pertinent to the 5th question, the purpose of this *new argument* is to supplement the Petitioner's defense in the unlikely event that this Court finds the Law Against Discrimination null and void in cases, such as here, where the Plaintiff is unable to bring any allegation that the Defendant discriminated for any of those reasons expressly for-

bidden therein *i.e.*, " * * * race, creed, color, national origin, ancestry, or age * * *."

It has previously been disclosed that the Petitioner was required against his will, to labor for less than equal wages or face dismissal. Therefore it is his contention that these tactics submitted him to involuntary servitude, in violation of U. S. C. A. Amend. XIII Sec. 1, p. 269 which states:

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Embodying this Amendment, an authority has stated that "involuntary servitude" as used in this Amendment means the condition of one who is compelled by force, coercion, or imprisonment, and against his will to labor for another whether he is paid or not. *Crews* v. *Lundquist*, 1935 197 N. E. 768, 361 Ill. 193.

Conclusion

From the foregoing facts, it may be readily determined that the entire action herein amounts to the simple conclusion that under the law, the Petitioner should not have been required to labor for inequal wages or face dismissal, regardless of the absence of a contract. And that as a complainant, he was entitled to due process of law as guaranteed by the Federal Constitution. Therefore, the questions presented in this original case are important and basic to Civil Rights, particularly in the field of employment. And I respectfully suggest that a decision by this Court on these questions is urgently needed by all employees so that they may have full benefit of the Law Against Discrimination, and/or be protected against involuntary servitude.

For these reasons, Petitioner prays for the issuance of a Writ of Certiorari to review the judgment of the Supreme

Court of New Jersey, and upon such review, reverse such judgment and grant the Petitioner's Counter-Motions thereby permitting him to move for compensatory damages, interest if any, costs, and reinstatement with the Respondent.

Respectfully submitted,

/s/ RAYMOND D. BROWN,
Petitioner, Pro Se.

Dated: September 20, 1963.

APPENDIX

Petition for Transfer of Pending Action

SUPREME COURT OF NEW JERSEY

Docket No. 4067

RAYMOND D. BROWN,

Plaintiff-Appellant,

v.

DREW CHEMICAL CORPORATION,
(formerly E. F. Drew & Co., Inc.),

Defendant-Respondent.

Sirs:

Rule 1:10-1(a) provides:

> "Certification shall be allowed where the Court of its own motion, certifies a cause or class of causes for appeal."

Author's notes provide *inter alia*:

> "* * * Subparagraph (a) of this rule permits the Supreme Court to certify any case directly to it for determination. The Supreme Court has exercised this right even after an appeal has been taken to the Appellate Division of the Superior Court * * * It should be noted that under Rule 1:10-4(c), certification must be granted if it is sought to review a judgment or order of the Appellate Division when the petitioner is entitled to an appeal as of right * * *."

Petition for Transfer of Pending Action

THEREFORE, the above-named plaintiff-appellant respectfully petitions that this Court certify to it the above entitled action, which is pending in the Appellate Division of the Superior Court under Docket No. A-213-62. This petition is urged on the grounds that due to the originality, statutorial importance, and urgency of the matter, it should be determined by the Supreme Court.

Respectfully submitted,

/s/ RAYMOND D. BROWN,
Plaintiff-Appellant.

Dated: March 1, 1963.

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Order Denying Certification

SUPREME COURT OF NEW JERSEY

Docket No. 4067

On Motion for Certification

Raymond D. Brown,

Plaintiff-Appellant,

v.

Drew Chemical Corporation,

Defendant-Respondent.

This matter having been duly presented to the Court, it is Ordered that the motion for certification is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this twenty-fifth day of March 1963.

/s/ John H. Gildea,
Clerk.

Mandate on Affirmance

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

Appeal Docket No. A-213-62

RAYMOND D. BROWN,
Plaintiff-Appellant,

v.

DREW CHEMICAL CORPORATION,
(formerly E. F. Drew & Co., Inc.),
Defendant-Respondent.

This cause having been duly argued before this Court by Raymond D. Brown, appellant pro se, and James T. Clare, counsel for the respondent, and the Court having considered the same,

It is hereupon ordered and adjudged that the judgment of the said Superior Court, Law Division, is affirmed with costs; and it is further ordered that this mandate shall issue ten days hereafter, unless an application for rehearing shall have been granted or is pending, or unless a Notice of Appeal to the Supreme Court or a Notice of Petition for Certification has been filed or is pending, or unless otherwise ordered by this Court and that the record be remitted to the Superior Court, Law Division, to be there proceeded with in accordance with the rules and practice relating to that Court, consistent with the opinion of this Court.

Mandate on Affirmance

WITNESS the Senior Judge of the Part, Superior Court of New Jersey, Appellate Division, at Trenton on the 13th day of May, 1963.

Clerk of the Superior Court.
I. GRANT SCOTT,

I hereby certify that the foregoing is a true copy of the original on file in my office.

I. GRANT SCOTT,
Clerk.

Order Denying Petition

SUPREME COURT OF NEW JERSEY

Docket No. 4150

RAYMOND D. BROWN,

Plaintiff-Petitioner,

v.

DREW CHEMICAL CORP.,

Defendant-Respondent.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the first day of July, 1963.

MORTIMER G. NEWMAN, JR.,
Clerk of the Supreme Court.

Filed:
July 1, 1963
John H. Gilden,
Clerk.

A true copy

John H. Gilden
Clerk